

IN THE SUPREME COURT OF THE STATE OF NEVADA

BROCK JUSTIN WADE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40514

FILED

OCT 15 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Brock Wade's post-conviction petition for a writ of habeas corpus.

On April 9, 2001, the district court convicted Wade, pursuant to a guilty plea, of one count of sexual assault on a minor under the age of sixteen (Count I), and one count of lewdness on a child under the age of fourteen (Count II). The district court sentenced Wade to serve a term of 240 months in the Nevada State Prison with the possibility of parole in 60 months for Count I. The district court sentenced Wade to serve a term of life in the Nevada State Prison with the possibility of parole in 120 months for Count II. Count II was imposed to run consecutively with Count I. No direct appeal was taken.

On August 23, 2002, Wade filed a proper person post-conviction petition for a writ of habeas corpus in the district court.¹ The

¹On April 8, 2002, Wade filed a motion for an extension of time to file a post-conviction petition for a writ of habeas corpus in the district court. The district court denied the motion. Wade appealed the denial of his motion to this court. This court determined that no statute or court rule permitted an appeal from the denial of Wade's motion, and this court dismissed the appeal. Wade v. State, Docket No. 39679 (Order Dismissing Appeal, September 20, 2002).

State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Wade or to conduct an evidentiary hearing. On October 23, 2002, the district court denied Wade's petition. This appeal followed.

Wade filed his petition more than one year after entry of his judgment of conviction. Thus, his petition was untimely filed.² Wade's petition was procedurally barred absent a demonstration of good cause and prejudice.³

In an attempt to establish good cause, Wade argued that his petition was untimely filed because "all pertinent legal documents [were] being temporarily confiscated by officials at Lovelock Correctional Center." However, Wade does not specify what legal documents were confiscated by State officials, how those documents were relevant to his petition, and for what period of time they were held.⁴ Moreover, even assuming that Wade's allegation is true, a petitioner's lack of access to legal files alone does not establish good cause to excuse the petitioner's failure to file a timely habeas corpus petition.⁵ Wade provides no other argument in an

²See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087-88, 967 P.2d 1132, 1133-34 (1998) (holding that the one year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely direct appeal or from entry of the judgment of conviction if no direct appeal is taken).

³See id.


⁴See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare, or naked, allegations unsupported by specific facts are insufficient to grant habeas corpus relief).

⁵See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (holding that a trial counsel's failure to send a petitioner his legal files did not establish good cause to excuse the petitioner's failure to file a timely habeas corpus petition).


attempt to excuse his untimely petition. Therefore, we conclude that the district court did not err in denying Wade's habeas corpus petition as being untimely filed, and that Wade has failed to meet his burden to overcome this procedural default.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Wade is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Brock Justin Wade
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.